impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: February 24, 1995.

William J. Muszynski,

Acting Regional Administrator.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(d); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923; E.O. 12777, 56 FR 54757.

Appendix B [Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Radium Chemical Company site, Woodside, New York.

[FR Doc. 95–6769 Filed 3–23–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[GN Docket No. 94–90, FCC 95–98]

Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220–222 MHz Land Mobile Band and Use of Radio Dispatch Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order (*Order*), the Commission eliminates rules that prohibit wireline telephone carriers from holding licenses in the Specialized Mobile Radio (SMR) service and the commercial 220–222 MHz land mobile band. The *Order* also eliminates the prohibition on the provision of dispatch service by cellular licensees, other licensees in the Public Mobile Services, and licensees in the Personal Communications Services (PCS). After reviewing the record, the Commission finds that these restrictions no longer serve the public interest and should be eliminated.

EFFECTIVE DATES: Sections 22.577 and 22.901 rule changes will be effective April 24, 1995. Sections 90.603 and 90.703 rule changes will be effective March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Sue McNeil, Wireless Telecommunications Bureau, Commercial Radio Division, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order* in GN Docket No. 94–90, adopted March 7, 1995 and released March 7, 1995. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, N.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Washington, DC 20037.

Synopsis of the Report and Order

I. Background

1. When the Commission established the SMR service in 1974, it elected to prohibit wireline telephone common carriers from holding SMR base station licenses. The Commission has stated that the wireline prohibition was intended to ensure that the provision of SMR service would be available as a business opportunity for small entrepreneurs and to reduce incentives for wireline common carriers to engage in discriminatory interconnection practices. In 1986, the Commission proposed to eliminate the SMR restriction after receiving several requests from wireline carriers for waiver of Section 90.603(c). The Commission observed that the original rationale for establishing the restriction may no longer apply. The Commission subsequently granted several conditional waivers to wireline carriers seeking to acquire SMR stations.

2. In 1992, the Commission terminated the proceeding on grounds that the record had become stale and stated that the restriction should be retained until the Commission could more fully evaluate the competitive impact of allowing wireline providers into the SMR marketplace. The Commission terminated all waivers that had been previously granted, but gave waiver recipients an opportunity to rejustify their waiver grants. Southwestern Bell Corporation (Southwestern Bell), Bell Atlantic Enterprises International Inc. (Bell Atlantic), and US West Paging, Inc. (US West) filed requests to rejustify the waiver grants that had been terminated pursuant to the *Termination Order* (57 Fed. Reg. 32450 (July 22, 1992)). In addition, RAM Mobile Data USA Limited (RAM Mobile), Cass Cable TV, Inc. (Cass Cable), and American Paging, Inc. (API) subsequently have sought waivers of the wireline prohibition. The Commission issued a public notice requesting public comment regarding the waiver requests on April 12, 1994. In addition, BellSouth has filed an appeal of the Commission's *Termination Order*, which is pending before the D.C. Circuit.

3. In 1991, the Commission adopted an analogous restriction for the newly established commercial 220 MHz service that prevents wireline carriers from holding licenses in that service as well. The Commission's rationale for excluding wireline carriers from 220 MHz was the same as its original rationale for excluding wireline carriers from SMR licensing.

4. The Omnibus Budget Reconciliation Act of 1993 (Budget Act) amended the Communications Act and prescribed comprehensive regulatory changes for the mobile services marketplace. The legislative history of the Budget Act identified the Commission's ban against wireline carriers holding SMR licenses as a regulation that should be reviewed by the Commission. The Commission thus proposed to eliminate its restrictions that prohibit wireline telephone common carriers from holding SMR and commercial 220 MHz licenses on the grounds that the restrictions may no longer be necessary and that competition would be promoted by their elimination.

5. At the same time, the Commission also proposed to eliminate the prohibition on the provision of dispatch service by common carriers, including cellular licensees, other licensees in the Public Mobile Service, and PCS licensees. The prohibition, which was originally enacted by Congress as part of the 1982 amendments to the Communications Act, prohibited common carriers licensed after January 1, 1982, including all cellular licensees, from offering dispatch services. In the Budget Act, Congress retained the statutory ban, thus potentially applying it to all CMRS providers, but granted the Commission authority to repeal the ban by regulation in whole or in part. In the *Notice of Proposed Rule Making* (59 Fed. Reg. 42563 (Aug. 18, 1994)), the Commission tentatively concluded that the prohibition was outdated and that its repeal would promote competition. Thirty-two (32) comments and twelve (12) reply comments were filed in response to the proposals in this proceeding.

II. Discussion

A. Licensee Eligibility in SMR and Commercial 220 MHz Service

6. *Background.* In the *Notice*, we tentatively concluded that the SMR and commercial 220 MHz wireline ownership restrictions are no longer appropriate in today's competitive mobile services marketplace. As described in the *Notice,* there were several reasons for this tentative conclusion. First, we observed that the risk of wireline carriers being able to cause competitive harm if allowed to enter the SMR market has diminished in recent years. We indicated that the breakup of AT&T and the rapid introduction of new mobile service options have combined to create an environment in which wireline carrier participation in mobile services has the potential to increase competition rather than impede it.

7. In the *Notice*, we also drew comparisons to PCS, noting that we have already concluded that wireline entry into PCS will produce economies of scope for that service, which will promote its rapid development and yield a broader array of PCS services at lower costs to consumers. We indicated that similar benefits could result from allowing wireline entry into the SMR and commercial 220 MHz services.

8. We also tentatively concluded that the restrictions no longer are necessary to safeguard against competitive concerns that the LECs may (1) discriminate in the offering of interconnection to non-affiliated SMR licensees or (2) use their market power in the local exchange market to cross-subsidize SMR services and undercut their competitors. We indicated that existing statutory and regulatory safeguards probably were sufficient to prevent LECs from engaging in these discriminatory activities. In particular, the Commission has found that, pursuant to Section 201 of the Communications Act, it is in the public interest to require LECs to provide reasonable interconnection to commercial mobile radio service (CMRS) providers. We also noted that independent accounting and structural safeguards exist and would apply to wireline participants in the SMR market to prevent cross-subsidization. We did, however, seek comment on the effectiveness of applying these existing safeguards to wireline carriers entering these services.

9. We made additional observations as well. We indicated that wireline entry was unlikely to chill further development of the service since SMR spectrum has been licensed fully in most metropolitan areas. As a result, we stated that wireline entry into the SMR service would likely occur through acquisitions that are subject to Commission review. Similarly, we reasoned that wireline entry into commercial 220 MHz likely would be gradual and subject to case-by-case review by the Commission as part of the application process. We also asked whether commercial 220 MHz services were sufficiently disparate from any LEC offering to make negligible any ability these carriers might have to exert undue market power or restrain trade. This was the analysis we used to justify LEC entry into narrowband PCS. We further noted that wireline participation could promote opportunities for additional entry of small, rural telephone companies and could infuse new capital and expertise into the mobile services marketplace.

10. Also, while we generally concluded that the wireline restrictions were outmoded, we questioned whether there was any justification for continuation of the restrictions for either or both of the SMR and commercial 220 MHz services. Finally, we deferred consideration of whether there was a need to restrict cellular eligibility for SMR or commercial 220 MHz licensing pending a decision in GN Docket No. 93–252 to impose a spectrum cap on CMRS providers.

11. *Comments.* All but two commenting parties support our proposal to permit wireline telephone common carriers to hold SMR and commercial 220 MHz licenses. Many commenters maintain that eliminating the restrictions in the SMR service would facilitate competition and that increased competition would thereby benefit consumers through lower prices and expanded choices. Commenters also agree that our proposal is consistent with our efforts to achieve regulatory symmetry by providing identical eligibility requirements for all CMRS licensees. In addition, several commenters note that changes in the SMR marketplace during the time since the service was established eliminate the need for wireline eligibility restrictions. Finally, commenting parties generally agree that existing accounting and interconnection safeguards will adequately prevent cross-subsidization and discrimination. The Commission was encouraged to enforce these existing safeguards rigorously.

12. Most parties who expressly commented on commercial 220 MHz service generally support lifting the prohibition on wireline entry for the same reasons set forth in support of lifting the restrictions on wireline entry into SMR service. AMTA, however, opposes lifing the restrictions at this time. AMTA contends that the commercial 220 MHz service is still in its infancy, and that its competitive potential is largely unknown.

13. SMR WON is the only commenting party to oppose lifting the wireline prohibition for both SMR and commercial 220 MHz services. Specifically, SMR WON expresses concern that eliminating the restriction would harm traditional SMR operators that would not be able to compete against the market power of wireline common carriers. Moreover, SMR WON alleges that existing safeguards have been ineffective in preventing wireline carriers from exercising their monopoly power and financial strength to the detriment of competition in the cellular marketplace. Therefore, SMR WON urges that no changes in the wirline restriction should be made except as part of comprehensive legislation addressing the monopoly power of the LECs.

14. *Decision*. We amend our rules to permit wireline telephone common carriers to acquire SMR and commercial 220 MHz licenses without restriction and dismiss pending waiver requests as moot. Eliminating the wireline prohibition is likely to yield substantial public benefits. Commenters echoed our view that permitting wireline common carriers to acquire SMR and commercial 220 MHz licenses will allow the realization of significant economies of scope and provide a new source of capital that will yield a broader array of services at lower costs to consumers. Repealing the wireline prohibition also will stimulate competition and promote opportunities for additional entry of numerous small wireline carriers, particularly in rural areas, in addition to the large wireline carriers. Moreover, we note that the record supports our view that changes in the wireless marketplace, including our efforts to achieve regulatory symmetry among comparable mobile services, obviate the need for the wireline restrictions. Finally, we believe that existing regulatory safeguards will prevent wireline common carriers from engaging in anti-competitive conduct.

15. We expect that wireline participation in the provision of SMR and commercial 220 MHz services will benefit the consumer. Specifically, allowing LECs to participate in SMR and commercial 220 MHz services will likely produce significant economies of scope by allowing wireline carriers to combine related services so that they may be provided at less cost than providing them separately. We expect

that because of their existing wireline infrastructure, LECs will be likely to achieve technical efficiencies in spectrum use that will result in lower costs. Such economies can promote more rapid development of technology and yield a broader range of services at lower costs to consumers.

16. We expect that wireline entry also will benefit competition by providing an additional source of capital and expertise in the mobile services marketplace. Allowing wireline entry will give SMR providers the ability to draw upon this capital and expertise as they move from stand-alone analog to wide-area networks. Despite AMTA's opposition, we reach a similar conclusion with respect to participation by wireline carriers in the commercial 220 MHz service. We observe that access to the capital and technical expertise of wireline carriers may be important to the commercial 220 MHz service at its critical stage of technological development. SNET notes, for example, that wireline carriers can ''quickly allocate resources, including existing infrastructure, into wireless services that will speed the deployment of services, produce innovative service offerings, promote competition and produce competitive rates for consumers.'' We also note that commercial 220 MHz, like PCS, is a new, developing service, and we have elected to allow wireline carriers to participate fully in both the narrowband and broadband PCS services. Moreover, we observe that commercial 220 MHz service resembles narrowband PCS in that it is a two-way, narrowband service that is technically distinct from other service offerings provided by LECs. In the *Narrowband PCS First Report and Order* (59 FR 9100 (Feb. 25, 1994)), we concluded that the dissimilarity between narrowband PCS and LEC service offerings provided additional justification for allowing wireline entry. We conclude that the same rational supports our conclusion with respect to commercial 220 MHz service.

17. Wireline participation also could promote opportunities for additional entry of small entrepreneurs, such as rural telephone companies, in the SMR service. As the record in this proceeding suggests, small wireline carriers in rural communities are well positioned to provide SMR and commercial 200 MHz services in areas that presently are unserved or underserved. Eliminating the wireline restrictions would allow these providers to offer cost-effective services to rural customers by building on their existing infrastructure and presence in the market. We disagree with SMR WON's allegation that wireline participation would impede competition, especially in rural communities. As commenters (including rural telcos) point out, wireline entry will bring new or additional SMR services to underserved rural areas, not merely replace existing small SMR operators. Additional opportunities for small business entry into the SMR business, including participation by small LECs, are being considered as part of the commission's competitive bidding proceeding. SMR WON erroneously suggests that our reference to our efforts to help small businesses successfully compete at auctions reveals that our real motivation for permitting wireline entry is to raise more funds at auction. Rather, we repeal the wireline prohibition because the record overwhelmingly indicates that wireline participation would serve the public interest by promoting competition, lowering costs, and expanding consumer choice. Moreover, we note that Congress specifically prohibits us from exercising our auction authority for the primary purpose of raising revenues.

18. Additionally, as we tentatively concluded in our *Notice*, the wireline restrictions are outmoded in view of recent regulatory changes in the mobile services marketplace. The Budget Act mandated that similar mobile services receive comparable regulatory treatment and divided all mobile services into two categories, CMRS and private mobile radio service (PMRS). In our *CMRS Second Report and Order* (59 FR 18493 (April 19, 1994)), we concluded that certain private mobile radio services, including SMR and commercial 220 MHz licensees, would be subject to reclassification as CMRS if they provide ''interconnected service.'' To the extent that SMR and commercial 220 MHz licensees qualify as CMRS providers, the principles of regulatory symmetry suggest that they should be subject to regulations similar to those imposed on cellular carriers, PCS licensees and other CMRS providers. Elimination of §§ 90.603(c) and 90.703(c) thereby furthers our objective to apply a symmetrical, consistent set of regulations governing CMRS by establishing identical wireline eligibility requirements for all CMRS providers.

19. As we observed in our *Notice*, the mobile services industry also has undergone substantial changes that obviate the need for the wireline restrictions. The record shows that the competitive concerns that led to the SMR eligibility restrictions are no longer applicable in the current competitive marketplace. The SMR industry has matured significantly since it was established in 1974. As AMTA points out, SMR channels already are in service in most large urban areas. Wireline carriers therefore will be largely limited to acquiring existing businesses, and all such transfers would be subject to Commission review. We will consider the competitive impact of any transfer to a wireline carrier as part of our public interest determination. In addition, we note that wireline SMR acquisitions will be subject to our CMRS spectrum cap, which restricts the amount of cellular, broadband PCS and SMR spectrum that any one entity may acquire in a geographic market. This acts as a competitive safeguard by limiting all wireline carriers from exerting undue market power in these services. Furthermore, we observe that the spectrum cap will also limit cellular licensees' ability to exercise market power and we therefore do not believe that additional restrictions on cellular participation are warranted.

20. Moreover, customer demand and the desire to offer ''seamless'' communications services has fostered the development of wide-area systems in both the 800 MHz and 900 MHz band. Wide-area licensees have aggregated spectrum across large regions, and are poised to offer services competitive with larger CMRS providers, such as cellular and PCS. For these reasons, we are not persuaded by SMR WON's argument that the SMR market is still relatively immature. These systems do not continue to require the same degree of regulatory nurturing that may have been appropriate during the early days of this service. In addition, we note that artificial eligibility restraints may hinder the growth of wide-area systems and their ability to compete with cellular and other CMRS licensees.

21. In addition, we conclude that existing regulatory safeguards are sufficient to prevent possible discrimination and cross-subsidization. We note that wireline telephone companies are required to provide reasonable interconnection upon request. As evidence of the infrequency of interconnection problems, we are unaware of any pending complaints alleging discriminatory interconnection filed by unaffiliated cellular providers against wireline carriers with cellular affiliates. We emphasize, however, that we agree with AMTA and ITA/CICS that the public interest is best served by strongly enforcing our policies and statutory requirements with respect to the interconnection obligations of LECs.

22. Additionally, independent accounting and structural safeguards exist to protect against cross-

subsidization of services and discriminatory pricing. In the CMRS docket, we determined that our joint cost and affiliate transaction rules would apply to all CMRS providers with LEC affiliates. These rules require LECs to maintain procedures to separate the costs of regulated activities from those of their activities that are classified as nonregulated for federal accounting purposes, and to account for their transactions with their nonregulated affiliates in accordance with specified valuation methodologies. Since most SMRs and commercial 220 MHz licensees fall inside the CMRS definition (and are not rate-regulated), these existing and applicable accounting rules should deter cross-subsidization problems. We also note that the largest LECs are subject to price caps, which provides additional assurances that no cross-subsidization will occur. Finally, we observe that the Commission adopted the same approach concerning structural separations and accounting safeguards in our PCS proceeding. We therefore decline to impose structural separation requirements in addition to those already imposed on certain dominant telephone carriers (*i.e.*, BOCs) that provide cellular service. We note, however, that we intend to enforce our existing safeguards vigorously in this area and are prepared to take additional steps, if necessary, to protect against cross-subsidization of services and discriminatory pricing.

23. In sum, the rapid growth of mobile services, regulatory changes and evolving competition in the mobile services industry justify the repeal of the restrictions on wireline telephone common carriers holding licenses in the SMR and commercial 220 MHz services. Accordingly, we eliminate these rules today. In addition, we dismiss requests for waivers filed by Southwestern Bell, Bell Atlantic, US West, RAM Mobile, Cass Cable and API. These requests are mooted by our decision to eliminate the wireline restriction.

B. Common Carrier Dispatch Prohibition

24. *Background.* In the *Notice*, the Commission tentatively concluded that eliminating the dispatch ban would enhance competition and thereby provide consumers with greater choice, more innovative service offerings, and lower prices. Commenters were invited to address the competitive consequences of permitting all CMRS providers [1] to offer dispatch services. As an alternative, however, the Commission solicited comment on whether it should delay repeal of the rule until August 10, 1996 (3 years from the date the Budget Act amendments became law), allow CMRS licensees (other than SMRs) to provide dispatch only on a secondary basis, or impose a limit on the amount of system capacity that non-SMR CMRS licensees may devote to dispatch service. The Commission requested comment on whether these measures were needed to prevent any anti-competitive impact that may result from participation by all CMRS providers in the market, with particular focus on cellular entry into dispatch. In addition, the Commission requested comment on whether mobile common carriers that are not land-based (*i.e.*, aviation, marine, and mobile satellite licensees who provide common carrier service) should be permitted to offer dispatch service. Noting that these categories of licensees previously were not prohibited from offering dispatch service under Section 332, we tentatively concluded that Congress did not intend to extend the dispatch ban to non-land mobile licensees when it amended that section in 1993. Instead, the Commission reasoned that Congress meant simply to repeat and incorporate its old prohibition against common carrier land mobile service providers offering dispatch service without modification and to give the Commission authority to repeal the prohibition in whole or in part.

25. *Comments.* Most commenters support our view that eliminating the dispatch prohibition would promote competition in the dispatch service and thereby provide customers with expanded choices and lower prices. In addition, many commenters observe that the dispatch prohibition is inconsistent with our efforts to achieve regulatory symmetry because it allows SMRs to provide a service that other CMRS providers, such as cellular licensees, may not. Moreover, several commenting parties note that recent technological improvements obviate any concern that land mobile licensees' common carrier service obligations would be compromised by the provision of dispatch service. Noting the significant benefits that would stem from permitting all CMRS licensees to provide dispatch services, most commenters requested that the Commission eliminate the prohibition immediately and without restriction.

26. Several parties, however, urged the Commission to retain the dispatch prohibition. Many proponents of the prohibition argue that certain CMRS licensees, such as cellular providers, would chill competition by forcing small dispatch providers out of the market through below-cost pricing. To the extent that CMRS licensees seek to offer dispatch service, commenters advocate that they do so on SMR frequencies.

27. Several commenters request that if we elect to eliminate the prohibition, we phase it out on August 10, 1996 or allow non-SMR CMRS licensees to provide service only on a secondary basis. As a separate matter, several commenters request the Commission to clarify that the dispatch prohibition did not extend to non-land mobile common carrier licensees.

28. *Decision.* We amend our rules to permit all mobile service common carriers to provide dispatch service.[2] The record demonstrates that repeal of the dispatch ban will enhance competition and thereby provide consumers with expanded choice and lower prices. Moreover, we agree with commenters that retention of the ban is inconsistent with our efforts to establish a regulatory framework which provides similar services with symmetrical requirements. We also note that recent technological developments, including digitalization, have minimized any concerns that using common carrier spectrum for dispatch would impair the licensees' capacity to provide common carrier service because digital technologies allow spectrum to be used more efficiently. Because of the significant public benefits that we expect by eliminating the prohibition, we decline to impose a sunset provision and permit all CMRS licensees to provide dispatch upon the effective date of these rule changes, and without restriction.

[1] The Budget Act provides that:

[a] common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

Budget Act at § 6002(b)(2), 47 U.S.C. 332(c)(2). Most CMRS licensees are thereby prohibited from offering dispatch service, unless the Commission determines that termination of this prohibition will serve the public interest.

[2] We note that we are not allowing cellular and other Part 22 licensees to provide stand-alone PMRS service, an issue that will be resolved on reconsideration of our *CMRS Second Report and Order. See CMRS Third Report and Order*, 59 Fed. Reg. 59945 (Nov. 21, 1994). Rather, by this action we will permit Part 22 licensees to provide non-interconnected dispatch service, so long as their dispatch users also have the ability to utilize interconnected service if they choose.

29. In eliminating the dispatch prohibition, we expect to enhance competition by permitting new types of CMRS providers to enter the commercial dispatch service. We believe that increased competition in dispatch service will, in turn, yield significant public benefits. We note that there seems to be a scarcity of spectrum capacity available for dispatch service, as users below 512 MHz strongly supported the Commission's proposals to make more efficient use of the spectrum in those bands and demand exists for most licenses in the 800 and 900 MHz bands. Moreover, we agree with commenters that the introduction of new competitors has the potential to lower costs to subscribers, increase availability of choices, and improve the quality of service. Several commenters maintain that allowing CMRS providers to provide dispatch in addition to other mobile services will satisfy consumers' growing demand for integrated services that are customized to fit their individual needs. AirTouch notes, for example, that its market research reveals that consumers want service packages to include text messaging, vehicle location, alpha-numeric paging, fax, dispatch, and mobile voice. In addition, we observe that eliminating the dispatch ban may lower the cost of multifunction equipment since a greater number of CMRS licensees will be able to provide dispatch service. Moreover, as McCaw and East Otter Tail suggest, eliminating the dispatch prohibition will make service available in areas where current options are limited. In particular, we expect that the elimination of the dispatch prohibition will benefit rural communities by facilitating competition in underserved areas and will allow some rural subscribers to obtain low-cost dispatch service from a third-party service provider for the first time.

30. Commenters seeking to retain the dispatch ban argue that allowing CMRS providers, particularly cellular licensees, to offer dispatch services actually would have an anti-competitive impact on the dispatch market. Noting that cellular carriers have significant resources and spectrum, opponents claim that cellular carriers will impermissibly underprice their service (by subsidizing the dispatch service with cellular revenues) in order to drive SMR operators out of business. To prevent any anti-competitive conduct, several commenters suggest that all CMRS providers be required to provide dispatch on frequencies designated for SMR service.

31. We are unpersuaded that any dispatch providers are likely to engage in anticompetitive conduct. To sustain a predatory pricing scheme, a dispatch provider must be able to price its services below its own costs and the costs of its competitors in order to drive competition out of the market. The dispatch provider must then raise its prices above a competitive level and effectively preclude potential competitors from entering or re-entering the market. We consider this possibility highly unlikely because the entire CMRS market is expanding, with a number of competitors expected to enter the marketplace in the near term. As a result, the two cellular providers in each market are expected to compete with other CMRS service providers, including SMR and PCS licensees, in providing a host of services in addition to dispatch. These providers will also compete with private mobile radio service (PMRS) providers, including businesses that elect to operate their own systems, in the provision of dispatch service. It is therefore unlikely that cellular carriers would benefit by engaging in any anticompetitive pricing scheme for particular services in order to eliminate competitors. Rather, market share likely will be based on quality, price, and the availability of other service options to satisfy a customer's individual needs. We note, however, that we will continue to study the dispatch market carefully and can take appropriate enforcement action if licensees engage in anticompetitive conduct. Moreover, we observe that the Department of Justice also has authority to take enforcement action against carriers that engage in predatory pricing.

32. We also do not believe that limiting dispatch service to SMR frequencies would be an efficient use of spectrum. To the extent that any CMRS providers have excess spectrum, we want to encourage them to develop innovative uses for it that are responsive to consumer demand, including dispatch service. Moreover, restricting dispatch service to SMR frequencies would limit competition by creating an artificial scarcity of spectrum available to provide dispatch service.

33. Permitting all CMRS licensees to provide dispatch service also is consistent with our efforts to achieve regulatory symmetry among comparable services. As many commenters point out, the dispatch prohibition allows SMR licensees to offer services that its CMRS competitors cannot. Elimination of the dispatch prohibition will help to equalize the regulatory requirements applicable to all mobile service providers by allowing competing operators to offer the same portfolio of service options and packages. This result is required by Congress' mandate that comparable mobile services receive similar regulatory treatment.

34. In addition, we note that recent technological developments undermine the original justification for the dispatch prohibition. When Congress adopted the dispatch prohibition, it sought to ensure that common carriers did not misuse frequencies by devoting them to dispatch use. The development of new technologies, including digitalization, have minimized any concerns that using common carrier spectrum for dispatch would impair the licensees' capacity to provide common carrier service because digital technologies allow spectrum to be used more efficiently. Moreover, the mobile services marketplace will ensure that spectrum is not used inefficiently for dispatch service if consumer demand demonstrates that alternative uses are more desirable.

35. Because of the significant public benefits that we expect by eliminating the prohibition, we decline to impose a sunset provision and permit CMRS licensees to provide dispatch without restriction. We agree with commenters that establishing a sunset period would delay the introduction of new competition without providing any benefit to consumers. Commenters favoring a sunset period maintain that they need an opportunity to adjust to common carrier obligations without disruption by new competitors. We note, however, that our intent in establishing the three-year transition period was to provide private carriers that will be reclassified as CMRS an opportunity to prepare for new regulatory requirements, not to shield them from new sources of competition. We are unpersuaded, therefore, that a sunset provision is needed to protect SMR licensees. Moreover, we observe that to the extent that non-SMR CMRS licensees will need to construct or modify their systems before they will be able to offer dispatch services, SMR providers will have an opportunity to adjust to new competitors. We also decline to limit non-SMR CMRS licensees' participation to providing dispatch on a secondary basis. There is no evidence in the record that restricting their participation in this manner would provide any benefit to consumers.

III. Procedural Matters

36. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice.* Written comments on the IRFA were requested, although none were received. The Commission has prepared the following

Final Regulatory Flexibility Analysis (FRFA) of the expected impact of the proposed rule changes on small entities.

I. *Reason for Action.* This *Report and Order* eliminates the restrictions contained in Sections 90.603(c) and 90.703(c) of the Commission's rules that prohibit wireline telephone common carriers from holding licenses in the SMR service and commercial 220 MHz band. The *Report and Order* also permits all CMRS providers to offer dispatch service in competition with SMR systems. The record in this proceeding demonstrates that these restrictions are no longer necessary and should be repealed.

II. *Objectives.* The Commission intends to promote competition, growth and innovation at a time when the mobile services marketplace is undergoing regulatory changes.

III. *Legal Basis.* The action is authorized under Sections 3(n), 4(i), 303(r), 332(c) and 332(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(n), 154(i) and 303(r), 332(c) and 332(d).

IV. *Reporting, Recordkeeping and Other Compliance Requirements.* None.

V. *Federal Rules Which Overlap, Duplicate or Conflict With Rules.* None.

VI. *Description, Potential Impact, and Number of Small Entities Involved.* Many small entities could be affected by the rule changes contained in the *Report and Order.* We expect that several small entities will benefit by eliminating the wireline restrictions and dispatch prohibition because it will provide these entities and additional opportunity to participate in the provision of these services.

VII. *Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives.* The *Notice* in this proceeding solicited comments on whether to eliminate the wireline eligibility restrictions and the dispatch prohibition. No significant alternatives were presented in the comments.

37. *Ordering Clauses.* Accordingly, IT IS ORDERED, that Part 22 of the Commission's Rules ARE AMENDED as set forth below and are effective April 24, 1995. It is further ordered that Part 90 of the Commission's Rules are amended as set forth below and are effective upon March 24, 1995.[3]

38. It is further ordered that the Petitions for Waiver filed by Southwestern Bell, Bell Atlantic, US West, RAM Mobile, Cass Cable, and API are dismissed as moot.

[3] We note that the Administrative Procedure Act allows the rules to become effective immediately because we are relieving a restriction rather than imposing one. *See* 5 U.S.C. 553(d)(1). We believe that it is appropriate for these rules to take effect immediately upon publication in the **Federal Register** in light of the pending requests for waiver, discussed *infra.*

List of Subjects

47 CFR Part 22

Public mobile services; Radio.

47 CFR Part 90

Private land mobile services; Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 22 and 90 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Sections 4, 303, 307, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307 and 332, unless otherwise noted.

2. Section 22.577 is amended by revising the heading, the introductory text, the introductory text of paragraph (a) and paragraphs (a)(1), (a)(2), (b) and (d), to read as follows:

§ 22.577 Dispatch service.

Carriers licensed under this subpart may provide dispatch service in accordance with the rules in this section.

(a) *Installation without prior FCC approval.* A station licensee may install or remove dispatch points for subscribers without obtaining prior FCC approval. A station licensee may install or remove dispatch transmitters for subscribers without applying for specific authorization, provided that the following conditions are met.

(1) Each dispatch transmitter must be able to transmit only on the mobile channel that is paired with the channel used by the base station.

(2) The antenna of the dispatch transmitter must not exceed the criteria in § 17.7 of this chapter that determine whether the FAA must be notified of the proposed construction.

* * * * *

(b) *Notification.* Licensees must notify the FCC (FCC Form 489) whenever a dispatch transmitter is installed pursuant to paragraph (a) of this section. The notification must include the name and address of the subscriber(s) for which the dispatch transmitter was installed, the location of the dispatch transmitter, the height of antenna structure above ground and above mean sea level, the channel(s) used, and the call sign and location of the base station.

* * * * *

(d) *Dispatch transmitters requiring authorization.* A dispatch transmitter that does not meet all of the requirements of paragraph (a) of this section may be installed only upon grant of an application for authorization therefor (FCC Form 600).

* * * * *

3. Section 22.901 is amended by revising paragraph (c) to read as follows:

§ 22.901 Cellular service requirements and limitations.

* * * * *

(c) *Dispatch service.* Cellular systems may provide dispatch service.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

4. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

5. Section 90.603(c) is revised to read as follows:

§ 90.603 Eligibility.

* * * * *

(c) Any person eligible under this part and proposing to provide on a commercial basis base station and ancillary facilities as a Specialized Mobile Radio Service System operator, for the use of individuals, federal government agencies and persons eligible for licensing under subparts B, C, D, or E of this part.

6. 47 CFR 90.703(c) is revised to read as follows:

§ 90.703 Eligibility.

* * * * *

(c) Any person eligible under this part proposing to provide on a commercial basis, station and ancillary facilities for the use of individuals, federal government agencies and persons eligible for licensing under subparts B, C, D, or E of this part.

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47 CFR Part 64

[CC Docket No. 91–281; FCC 95–119]

Calling Party Telephone Number; Privacy

AGENCY: Federal Communications Commission.